HONOURABLE SRI G.S. SINGHVI, THE CHIEF JUSTICE

AND

HONOURABLE SRI JUSTICE R. SUBHASH REDDY

WRIT PETITION No. 26387 OF 2005

Between

Mr. P.Sai Babu ….Petitioner

And

The Union of India, rep. by its Secretary,

Ministry of Law and Justice, Sastry bhavan,

New Delhi and others. …Respondents

Counsel for the petitioner : Mr.T.Raghunath

Counsel for Respondent No.1 : Mr.A.Rajasekhar Reddy,

Asst. Solicitor General of India

Counsel for Respondent No.2 : Mr. C.V.Nagarjuna Reddy.

DATED: 27-12-2005

Per R. Subhash Reddy,J.

In this Writ Petition, apart from challenging the validity of Section 139 of the Negotiable Instruments Act, 1881 (for short 'the Act'), the petitioner has prayed for issuance of writ of mandamus to the second respondent-Judicial Magistrate of First Class, Manthani, Karimnagar District, to dismiss the criminal complaint filed in C. C. No. 334 of 1998 filed by respondent No.3 Sri M. Malla Reddy.

A perusal of the record shows that respondent No.3 filed complaint in the Court of Judicial Magistrate of First Class, Manthani alleging therein that the petitioner has committed offence under Section 138 read with Section 142 of the Act. According to the complainant, the petitioner, who was the Managing Director of Tejasvi Hire Purchase Limited and Tejasvi Permanent Fund Limited, had collected about Rs.1,50,000/-, with assurance to allot house site, but, however, he had closed the business abruptly and shifted to Hyderabad. It was further alleged that the petitioner had sought to refund the amount by issuing three post dated cheques: bearing No.859039 dated
31-7-1998 for Rs.50,000/-, No.859040 dated 31-8-1998 for Rs.50,000/- and, No.859041 dated 30-9-1998 for Rs.47,200/-, payable at Andhra Bank, Himayatnagar, Hyderabad, but when the cheques were presented for encashment, the same were dishonoured by the bank on the ground of 'insufficiency of funds'.

We have heard learned counsel for the parties. The petitioner's prayer for quashing the complaint filed by respondent No.4 deserves to be dismissed because as per his own showing vide judgment dated 29-11-2005, learned Judicial Magistrate of First Class, Manthani convicted and sentenced him. If he is aggrieved by the judgment of the trial court, the petitioner is free to avail the remedy of appeal under the relevant statutory provisions.

The petitioner's challenge to the constitutional validity of Section 139 of the Act deserves to be rejected because he has not laid foundation for the said challenge.

The only assertion made in the affidavit filed in support of the writ petition is that the provision under Section 139 of the Act runs contrary to the explanation to Section 138 of the Act, and also, same is contrary to provision under Section 102 of the Indian Evidence Act, 1872. Section 138 of the Act and the explanation, reads as follows:

"**138: <u>DISHONOUR OF CHEQUE FOR INSUFFICIENCY</u>**

<u>ETC., OF FUNDS IN THE ACCOUNT</u>:

where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence, and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless:

a. the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, which ever is earlier:

b. the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

c. the drawer of such cheque fails to make the payment of the said amount of money, to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purposes of this section, 'debt or other liability' means a legally enforceable debt or other liability."

The provision as contained under Section 139 of the Act is with regard to drawing of presumption in favour of the holder of cheque for the purpose of any debt or other liability, as referred under Section 138 of the Act, whereas Section 102 of the Indian Evidence Act, 1872, is a provision with regard to burden of proof in a suit or proceeding. In our opinion, there is no conflict between the two provisions because

the same operate in different fields. Therefore, it is not possible to accept the petitioner's prayer for striking down Section 139 of the Act.

For the reasons mentioned above, the writ petition is dismissed.

R. SUBHASH REDDY, J.

G.S. SINGHVI, CJ.

27th December, 2005.

Msnr / svs